

### **REMARKS**

The Election/Restriction Requirement of September 3, 2008 has been reviewed and the comments therein were carefully considered. Claims 106-110, 112-117, 119-127 and 129-143 were pending in this application. Claims 111, 118 and 128 were previously cancelled.

### **Election/Restriction**

In the Office Action, claims 106, 113, 120, 125, 130, 143 were deemed subject to a restriction and/or election requirement. More specifically, an election is required between:

Species I: Figure 1.

Species II: Figure 2a.

Species III: Figures 2b, 2c.

Species IV: Figure 2d.

Species V: Figures 7, 3a, 3b.

Species VI: Figures 7, 4a, 4b.

Species VII: Figures 7, 5a, 5b.

Species VIII: Figures 7, 6a, 6b.

By this response, the Applicants, without prejudice or admission, elect to proceed with examination of the invention of Species V (Figures 7, 3a, 3b) in the even that no generic claim is finally held to be allowable. The election is made with traverse. The claims that would be elected if none of the above generic claims identified above are found to be allowable would be 107-110, 112, 114-119, 121-122, 124, 126-127, 129, 131-135, 137-140, and 142. As admitted by the Examiner, each of the independent claims is generic to the alleged species. As seen in the listing of claims, several of the dependent claims share common language. See, e.g., claims 112, 119, 124, 129, and 131.

Applicants respectfully traverse, and thus reserve their right to petition, the Election Requirement on several grounds. Each of these grounds demonstrate that there will not be an “examination and search burden” on the Examiner as alleged in the Action. First, the present application was filed on November 15, 2001, nearly seven years ago, and this is the first instance of the Examiner setting forth the a Restriction Requirement. According to the Patent Office’s

own records, the Examiner has already conducted 5 searches, none of which resulted in a restriction or election requirement. (The searches were conducted on 1/17/2005, 7/14/2005, 12/19/2005, 05/20/2006 and 12/1/2006). In fact, the claims have not amended after the Examiner's last search. The claims were last amended on October 30, 2006. As clearly stated in the Applicant's Amendment dated October 30, 2006, the amendments were made to each of the independent claims based upon the Examiner's indication that such claims "would be allowable over the art of record." (Id., see page 2). More importantly, the Examiner "require[d] the Applicants to file an RCE since a search would have to be performed." (Id.). The Examiner conducted a search on December 1, 2006 and again rejected the claims – without issuing a restriction or election requirement. These **are the same claims** currently subjected to this Restriction Requirement. Thus, a search on these very claims has already been performed.

In fact, these same claims were on Appeal to the Board of Patent Appeals and Interferences, in which the Examiner has already filed an Examiner's Answer. The claims were only removed from appeal so the Applicants could file an I.D.S. citing references provided in an International Search Report regarding a related application. In response, Applicants are now faced with an 8-way Restriction.

Furthermore, as discussed above, the vast majority of the dependent claims recite similar subject matter as dependant claims depending upon the other generic independent claims. For example, see claims 112, 119, 124, 129, and 131; see also claims 107 and 114, or claims 115 and 121, or claims 108 and 116. The Action indicates that "mutually exclusive" characteristics of the figures prompted the Election Requirement, however, the Action, however, is silent to what characteristics where used to define the species. Applicants, are therefore, unsure what characteristics the Office is basing the species on.

As discussed above, there is no "examination and search burden" on the Examiner to conduct a search for any of the pending claims. For at least these reasons, Applicants respectfully traverse the Election Requirement respectfully requests its withdrawal.

**CONCLUSION**

The Applicant respectfully requests consideration of the application and allowance of all pending claims. Please feel free to contact the undersigned should any questions arise with respect to this case that may be addressed by telephone.

Respectfully submitted,  
**BANNER & WITCOFF, LTD.**

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